IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODPUR

ORDER

S.B. Criminal Misc. Petition No.1348/2007

(Vinod & Ors.Vs. State)

Date of Order : 25th October, 2007

HON'BLE MR. H.R. PANWAR, J.

Mr. Suresh Kumbhat for petitioner.
Mr. Ashok Upadhyay, P.P.

By the instant criminal misc petition under Section 482 Cr.P.C., the petitioner has challenged the orders dated 11.07.2007 and 21.08.2007 passed by the Sub-Divisional Magistrate, Sirohi (for short `the Executive Magistrate') in proceedings under Section 133 Cr.P.C.

I have heard learned counsel for the parties and carefully gone through the impugned orders. It appears from the orders impugned that on national highway No.14, from Sirohi to Ahemdabad, there is a temple situated, temple Hanumanji. The petitioners are worshipers. A complaint under Section 133 Cr.P.C. was filed by the SHO, Police Station Sirohi alleging therein that these petitioners, who are worshipers of the temple

Hanumanji have been obstructing the flow of the vehicles on the national highway and thereby causing inconvenience and nuisance to the people passing by.

Learned counsel for the petitioner submits that it is not uncommon that there are temples may be at road side and worshiping in the temple cannot be said to have caused any inconvenience or nuisance. Learned counsel has relied on a decision of the Hon'ble Supreme Court in Ram Autar and Others Vs. State of Uttar Pradesh, AIR 1962 Supreme Court 1794, wherein the Apex Court held that if a trade like auctioning which has to be carried on as necessary for the well being of the community, some amount of noise has to be borne in at least that part of the town where such trade is ordinarily carried on. In making the provisions of Section 133 of the Code of Criminal Procedure, the legislature cannot have intended the stoppage of such trades in such part of town, merely because of the "discomfort" caused by the noise in carrying on the trade. On these premises, the Hon'ble Supreme Court held that in our opinion, therefore, the slight discomfort that may be caused to some people passing by the road or living in the neighbourhood cannot ordinarily be considered to be such as to justify action under Section 133 of the Code of Criminal Procedure, in these circumstances, the orders passed under Section 133 Cr.P.C. held

to be not justified and while allowing the appeal, the orders made by the Magistrate was set aside.

The case relied on the by the learned counsel for the petitioner is similar to the facts of the instant case. In the instant case also, even if any discomfort is caused to the people passing by, it cannot be said that it amounts to causing public nuisance. In these circumstances, in my view, the orders impugned cannot be sustained and liable to be set aside.

Consequently, the misc. petition is allowed and the orders impugned are set aside. The proceedings initiated against the petitioners under Section 133 Cr.P.C. is quashed.

(H.R. PANWAR), J.

vij

S. B. Criminal Misc. Stay Petition No.732/2007

Date of Order : 25.10.2007

HON'BLE MR. H.R. PANWAR, J.

Mr. Suresh Kumbhat for petitioner.
Mr. Ashok Upadhayay, P.P.

Since the main petition itself has been decided, the stay petition also stands disposed of.

(H.R. PANWAR), J.

vij